



STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:)	Docket HWCA: P1-99/00-007
)	
Riverbank Army Ammunition Plant))	
5300 Claus Road)	CORRECTIVE ACTION
Riverbank, California 95367)	CONSENT AGREEMENT
EPA ID No. CA 7210020759)	
)	
)	
)	Health and Safety Code
Respondent.)	Section 25187
)	

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC or Department) and the Riverbank Army Ammunition Plant (Respondent) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to the waivers of sovereign immunity at 42 U.S.C. §6926(b) and 42 U.S.C. §6928(a), and Health and Safety Code (HSC) Section 25187, which authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or has been a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility.

1.2. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.3. Respondent is the owner of a hazardous waste facility located at 5300 Claus Road, Riverbank, California (Facility).

1.4. Respondent engages in the management of hazardous waste pursuant to a permit issued by DTSC, on July 30, 1995.

1.5. The terms used in this Consent Agreement are as defined in Section 66260.10 of Title 22 of the California Code of Regulations (Cal. Code of Regs.), except as otherwise provided.

1.6. Respondent agrees to implement all approved workplans and to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference. Respondent waives any right to request a hearing on this Consent Agreement pursuant to HSC Section 25187.

FINDINGS OF FACT

2.1. On October 18, 1990, USEPA completed a RCRA Facility Assessment (RFA). The RFA and DTSC files identify 25 Solid Waste Management Units (SWMUs) and 16 Areas of Concern (AOCs) that either have released or may release hazardous waste or hazardous waste constituents into the environment. The SWMUs and AOCs are as follow:

SOLID WASTE MANAGEMENT UNITS (SWMUs)

SWMU No.

- | | |
|----|---|
| 1 | Industrial Wastewater Treatment Plant (IWTP) |
| 2 | Hazardous Waste Storage Area (A.K.A., Drum Storage Facility) |
| 3 | Empty Drum Storage Area (A.K.A., Railroad Car Off-Loading Area) |
| 4 | Drum Staging Area (A.K.A., Hazardous Waste Accumulation Area) |
| 5 | Chromium Reduction Unit (Building 13) |
| 6 | Chromium Reduction Unit (Building 1) |
| 7 | Coolant Recovery Unit (A.K.A., Hyde Ultrafiltration Unit) |
| 8 | Waste Oil Accumulation Unit (A.K.A., Waste Oil Storage Tank) |
| 9 | Equipment Wash Facility (A.K.A., Triple Rinse Area) |
| 10 | Landfill (Southern Portion) |
| 11 | Landfill (Northern Portion) |
| 12 | IWTP Sewer Line Break Area (A.K.A., Effluent Forced Main) |
| 13 | Incinerator (Building 123) |
| 14 | Incinerator (Building 163) |
| 15 | Pesticide Storage Area (Building 11) |
| 16 | Pesticide Storage Area (Building 165) |

- | | |
|----|---|
| 17 | Pesticide Storage Area (Building 170) |
| 18 | Former Sludge Desiccating Pit (A.K.A., Waste Salt Disposal Pit) |
| 19 | Waste Zinc-Cyanide Solution Neutralization Tanks |

SOLID WASTE MANAGEMENT UNITS (SWMUs) (cont'd)

SWMU No.

- | | |
|----|---|
| 20 | Northwest Storm Reservoir |
| 21 | Southeast Storm Reservoir |
| 22 | Sanitary Wastewater Settling Ponds (A.K.A., Sanitary Sewage Beds) |
| 23 | Evaporation/Percolation (E/P) Ponds |
| 24 | Industrial Waste Pipe Leak |
| 25 | Underground Storage Tanks |

AREAS OF CONCERN (AOC)

AOC No.

- | | |
|----|---|
| 1 | Mortar Line Accumulation Area (Building 4) |
| 2 | Machine Shop Accumulation Area (Building 9) |
| 3 | Vehicle Maintenance Accumulation Area (Building 15) |
| 4 | Grenade Line Accumulation Area |
| 5 | Former Windrowed Area |
| 6 | Sulfuric Acid Spill Area (1956) |
| 7 | Phosphoric Acid Spill Area (1978) |
| 8 | Horizontal Aboveground Storage Tanks |
| 9 | Vertical Aboveground Storage Tanks |
| 10 | Former Solid Waste Pile (Southeast Corner) |

11	Loading Racks
12	Industrial Wastewater Collection System
13	Draw Lube System (Building 178)
14	Zinc-Cyanide Wastewater Collection System
15	Building 13 Temporary Wastewater Line
16	Substation 5

2.2. Based on the RFA and DTSC files, DTSC concludes that further investigation is needed to determine the nature and extent of contamination of four AOCs as listed below:

AOC No.

8b	Transformer Oil Storage Tanks and Distribution System
12	Industrial Wastewater collection System
14	Zinc-Cyanide Wastewater Collection System
16	Substation 5/Building 11

2.3. Hazardous wastes or hazardous waste constituents have migrated or may migrate from the Facility into the environment through the following pathways: soil, surface water, and groundwater.

2.4. The hazardous waste and hazardous waste constituents of concern at the Facility are polychlorinated biphenyls, cyanide, solvents, metals, petroleum products, and pesticides.

2.5. The Facility is located near residences, the Modesto Irrigation District Main Canal, Oakdale Irrigation District Canal, Hetch-Hetchy Aqueduct and storm drains leading to the Stanislaus River.

2.6. Releases from the Facility have migrated toward domestic water supplies.

2.7. Respondent neither admits nor denies any allegations of fact or law as set forth in this Consent Agreement.

PROJECT COORDINATOR

3. Within fourteen (14) days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice.

WORK TO BE PERFORMED

4. Respondent and DTSC agree that the work to be performed pursuant to this Consent Agreement only pertains to the four AOCs identified in paragraph 2.2. above. Respondent further agrees to perform the work undertaken pursuant to this Consent Agreement in a manner consistent with: the attached Scopes of Work; DTSC-approved RCRA Facility Investigation Workplan, Corrective Measures Study Workplan, and any other DTSC-approved Workplans; HSC and other applicable state and federal laws and their implementing regulations; and applicable DTSC and USEPA guidance documents. Applicable guidance documents include, but are not limited to, the "RCRA Facility Investigation (RFI) Guidance" (Interim Final, May 1989, EPA 530/SW-89-031), "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1, September 1986), "Test Methods For Evaluating Solid Waste" (SW-846), and "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities" (EPA 530/SW-85-031, July 1986).

INTERIM MEASURES (IM)

5.1. Respondent shall evaluate available data and assess the need for interim measures in addition to those specifically required by this Consent Agreement. Interim measures shall be used whenever possible to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of contaminants while long-term corrective action alternatives are being evaluated.

5.2. Respondent shall submit a Current Conditions Report to DTSC in accordance with Section 6.1. The Current Conditions Report shall contain an assessment of interim measures. The assessment must include both previously implemented interim measures and other interim measures that could be implemented at the Facility. The assessment must also identify any additional data needed for making decisions on interim measures. This new

data or information shall be collected during the early stages of the RCRA Facility Investigation. DTSC will review the Respondent's assessment and determine which interim measures, if any, Respondent will implement at the Facility. If deemed appropriate by DTSC, such determination may be deferred until additional data are collected.

5.3. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify DTSC Project Coordinator orally within 48 hours of discovery and notify DTSC in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment. Within 45 days of receiving DTSC's written request, Respondent shall submit to DTSC an IM Workplan for approval. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation appended as Attachment 1. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize the Respondent to act prior to DTSC's receipt of the IM Workplan.

5.4. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent in writing. Within 45 days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval an IM Workplan that identifies Interim Measures that will mitigate the threat. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation appended as Attachment 1. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize Respondent to act prior to receipt of the IM Workplan.

5.5. All IM Workplans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Facility.

5.6. Concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan, Attachment 2.

RCRA FACILITY INVESTIGATION (RFI)

6.1. Within 90 days of the effective date of this Consent Agreement, Respondent shall submit to DTSC a Current Conditions Report and a Workplan for a RCRA Facility Investigation ("RFI Workplan"). The Current Conditions Report and RFI Workplan are subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 3. DTSC will review the Current Conditions Report and RFI Workplan and notify Respondent in writing of DTSC's approval or disapproval.

6.2. The RFI Workplan shall detail the methodology to: (1) gather data needed to make decisions on interim measures/stabilization during the early phases of the RCRA Facility Investigation; (2) identify and characterize all sources of contamination; (3) define the nature, degree and extent of contamination; (4) define the rate of movement and direction of contamination flow; (5) characterize the potential pathways of contaminant migration; (6) identify actual or potential human and/or ecological receptors; and (7) support development of alternatives from which a corrective measure will be selected by DTSC. A specific schedule for implementation of all activities shall be included in the RFI Workplan.

6.3. Respondent shall submit a RFI Report to DTSC for approval in accordance with DTSC-approved RFI Workplan schedule. The RFI Report shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 3. If there is a phased investigation, separate RFI Reports and a report that summarizes the findings from all phases of the RFI must be submitted to DTSC. DTSC will review the RFI Report(s) and notify Respondent in writing of DTSC's approval or disapproval.

6.4. Concurrent with the submission of a RFI Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 3. If Workplans for both an IM and RFI are required by this Consent Agreement, Respondent may submit a single Health and Safety Plan that addresses the combined IM and RFI activities.

6.5. Respondent shall submit a RFI Summary Fact Sheet to DTSC that summarizes the findings from all phases of the RFI. The RFI Summary Fact Sheet shall be submitted to DTSC in accordance with the schedule contained in the approved RFI Workplan. DTSC will review the RFI Summary Fact Sheet and notify Respondent in writing of DTSC's approval or disapproval, including any comments and/or modifications. When DTSC approves the RFI Summary Fact Sheet, Respondent shall mail the approved RFI Summary Fact Sheet to all individuals on the Facility mailing list established pursuant to 22 Cal. Code of Regs. Section 66271.9(c)(1)(D), within 15 calendar days of receipt of written approval.

CORRECTIVE MEASURES STUDY (CMS)

7.1. Respondent shall prepare a Corrective Measures Study if contaminant concentrations exceed current health-based action levels and/or if DTSC determines that the contaminant releases pose a potential threat to human health and/or the environment.

7.2. Within 45 days of DTSC's approval of the RFI Report (or Respondent's receipt of a written request from DTSC), Respondent shall submit a CMS Workplan to DTSC. The CMS Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 4.

7.3. The CMS Workplan shall detail the methodology for developing and evaluating potential corrective measures to remedy any contamination at the Facility. The CMS Workplan shall identify the potential corrective measures, including any innovative technologies, that may be used for the containment, treatment, remediation, and/or disposal of contamination.

7.4. Respondent shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondent can demonstrate to DTSC's satisfaction that they are not needed. The CMS Workplan shall include, at a minimum, a summary of the proposed treatability study including a conceptual design, a schedule for submitting a treatability study workplan, or Respondent's justification for not proposing a treatability study.

7.5. Respondent shall submit a CMS Report to DTSC for approval in accordance with DTSC-approved CMS Workplan schedule. The CMS Report shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 4. DTSC will review the CMS Report and notify Respondent in writing of DTSC's approval or disapproval.

REMEDY SELECTION

8.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMS Report, DTSC's proposed corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

8.2. Following the public comment period, DTSC may select final corrective measures or require Respondent to revise the CMS Report and/or perform additional corrective measures studies.

8.3. DTSC will notify Respondent of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

9. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent.

DTSC APPROVAL

10.1. Respondent shall revise any workplan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

10.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

10.3. Any DTSC approved workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

10.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

SUBMITTALS

11.1. Beginning with the first full month following the effective date of this Consent Agreement, Respondent shall provide DTSC with quarterly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due on the twenty-first day of the month. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 5. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

11.2. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

11.3. The certification required by paragraph 11.2 above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: _____

Name: _____

Title: _____

Date: _____

11.4. Respondent shall provide two copies of all documents, including but not limited to, workplans, reports, and correspondence of 15 pages or longer. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

11.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

PROPOSED CONTRACTOR/CONSULTANT

12. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within fourteen (14) days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement. DTSC may, subject to dispute resolution, disapprove of Respondent's contractor and/or consultant.

ADDITIONAL WORK

13. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within fourteen (14) days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit a workplan to DTSC for the additional work. Such workplan shall be submitted to DTSC within thirty (30) days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

QUALITY ASSURANCE

14.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and USEPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report (e.g., RFI Report).

14.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories, or any other analytical laboratories meeting California certification criteria, Respondent proposes to use must be specified in the applicable workplans.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

15.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

15.2. Respondent shall notify DTSC in writing at least seven (7) days prior to beginning each separate phase of field work approved under any workplan required by this Consent Agreement. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the

Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

15.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

ACCESS

16. Subject to the Facility's security and safety procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any other property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all non-privileged records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

RECORD PRESERVATION

17.1. Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of six (6) years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. Respondent shall notify DTSC in writing ninety (90) days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Chief
Land Disposal Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

17.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Agreement.

17.3. All documents pertaining to this Consent Agreement shall be stored in a central location at the Facility to afford ease of access by DTSC and its representatives.

DISPUTE RESOLUTION

18.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

18.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

18.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Chief, Land Disposal Branch, Department of Toxic Substances Control, with a copy to DTSC Project Coordinator. The written objection must be mailed to the Branch Chief within fourteen (14) days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

18.4. DTSC and Respondent shall have fourteen (14) days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

18.5. After the formal discussion period, DTSC will provide the Respondent with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by Chief, Land Disposal Branch, Department of Toxic Substances Control, or his/her designee.

18.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work to be performed under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

RESERVATION OF RIGHTS

19.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to

sue, release, waiver, or limitation on any rights, remedies, powers, or authorities, civil or criminal, that DTSC has under any statutory, regulatory, or common law authority.

19.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

19.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

19.4. Respondent reserves the right to raise or assert any defense, whether procedural or substantive, in law or equity, or to raise any issue as to jurisdiction, or standing of any party in any proceeding related or not related to this Consent Agreement.

19.5. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

19.6. This Consent Agreement is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not relieve Respondent of its obligations to comply with HSC or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

20. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or

corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

OTHER APPLICABLE LAWS

21. All actions required to be taken pursuant to this Consent Agreement shall be undertaken in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

REIMBURSEMENT OF DTSC'S COSTS

22.1. Respondent agrees to diligently seek funding and reimburse DTSC, subject to the terms and limitations set forth in the Consent Agreement, for all costs the DTSC incurs in providing services in direct support of the Consent Agreement. Respondent's reimbursement of costs incurred in implementation of this Consent Agreement is subject to the provisions of the Anti-Deficiency Act (31 U.S.C. Section 1341). Any requirement for payment or obligation of funds shall be subject to the availability of appropriated funds. No provision of this Consent Agreement shall be interpreted to require payment or obligation of funds by Respondent in violation of the Anti-Deficiency Act.

22.2 An estimate of DTSC's costs is attached as Exhibit A showing the amount of \$82,801.00. It is understood by the parties that the amount shown on Exhibit A is an estimate only and may differ from the actual costs incurred by DTSC in implementing this Consent Agreement. Exhibit A only covers DTSC's estimated oversight costs through approval of the RFI Workplan. DTSC will provide additional cost estimates for subsequent phases as the work progresses. DTSC and Respondent acknowledge that the estimate and Respondent's ability to obtain funding are subject to other provisions of this Consent Agreement.

22.3 DTSC will provide Respondent with a billing statement at least quarterly, which will include the name of the employee, identification of the activity, the amount of time spent on each activity, and the hourly rate charged. Within 90 days of receipt of a billing statement provided pursuant to the terms of this Consent Agreement, Respondent shall reimburse DTSC in the amount set forth in the statement. If Respondent does not pay an invoice within 90 days, the amount is subject to interest as provided by HSC Section 25360.1. Respondent reserves its right to contest payment of any interest penalties.

22.4. DTSC will retain all costs records associated with

the work performed under this Consent Agreement as required by state law. DTSC will make all documents which support the Department's cost determination available for inspection upon request, as provided by the Public Records Act. Respondent retains the right to audit costs records used by DTSC to develop billing statements.

22.5. Any dispute concerning costs pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

22.6. All payments shall be made within 90 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
Post Office Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

ANTI-DEFICIENCY ACT, 31 U.S.C. SECTION 1341

23.1. Any requirement for payment or obligation of funds by the Respondent established by the terms of this Consent Agreement shall be subject to the availability of appropriated funds. No provision in this Consent Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act. In case a payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring payment or obligation of such funds shall be appropriately adjusted. Respondent agrees diligently to seek funding for this Consent Agreement. Respondent agrees to provide written notice to DTSC as early as possible if Respondent asserts that Respondent cannot meet any payment obligations under this Agreement due to lack of appropriated funds.

23.2. If appropriate funds are not available to fulfill Respondent's obligation under this Consent Agreement, DTSC reserves the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Consent Agreement.

MODIFICATION

24.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modifications shall be in

writing, shall be signed by both parties, shall have as their effective date the date on which they are signed by DTSC, and shall be deemed incorporated into this Consent Agreement.

24.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Land Disposal Branch, Department of Toxic Substances Control, or his or her designee. Any approved workplan modification shall be incorporated by reference into this Consent Agreement.

TERMINATION AND SATISFACTION

25. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

FORCE MAJEURE

26.1. A Force Majeure shall mean any event arising from causes beyond the control of Respondent that causes a delay in or prevents the performance of any obligation under this Consent Agreement, including, but not limited to acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain at reasonable cost and after exercise of reasonable diligence, any necessary authorization, approvals, permits or licenses due to the action or inaction of any governmental agency or authority other than the Respondent; delays cause by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, which have been sought. In order for Force Majeure based on insufficient funding to apply to Respondent, Respondent shall have made timely request for such funds as part of the budgetary process as set forth in Section 22 (reimbursement of DTSC's Costs). A Force Majeure shall also include any strike or labor dispute, whether or not in control of the parties affected thereby. Force Majeure shall not include increased costs or

expenses of Correction Action, whether or not anticipated at the time such Corrective Actions were initiated.

26.2. If any event occurs or has occurred that may delay the performance or obligation under this Agreement, whether or not caused by a Force Majeure event, Respondent shall notify orally DTSC within 10 working days, of when Respondent first knew that the event might cause a delay. Within 10 working days thereafter, Respondent shall provide in writing to DTSC an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a Force Majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall include with any notice all available document supporting its claim that the delay was attributable to a Force Majeure.

26.3. If DTSC agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Agreement that are affected by the Force Majeure event will be extended by DTSC for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. If DTSC does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, DTSC will notify Respondent in writing of its decision. If DTSC agrees that the delay is attributable to a Force Majeure event, DTSC will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

26.4. If Respondent elects to invoke the Dispute Resolution Provision of this Agreement, it shall do so no later than 15 days after receipt of DTSC's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 26.2 and 26.3, above. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Agreement identified to DTSC and the Court.

EFFECTIVE DATE

27. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

SIGNATORIES

28. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: __June 6, 2002__ BY: ____-original signed by-_____
C.R. Hobby
Colonel, GS
Chief of Staff

DATE: __June 21, 2002__ BY: ____-original signed by-_____
James M. Pappas, P.E., Chief
Land Disposal Branch
Department of Toxic Substances Control

ATTACHMENT 3

COMMUNITY PROFILE OUTLINE

FOR _____

The following items should be included in the Community Profile:

SITE DESCRIPTION

- " Description of proposed project.
- " Map.
- " Description of the site/facility location.
- " Description of the surrounding land uses and environmental resources (including proximity to residential housing, schools, churches, etc.).
- " Visibility of the site to neighbors.
- " Demographics of community in which the site is located (e.g., socioeconomic level, ethnic composition, specific language considerations, etc.). This information may be found in local libraries (e.g., census records).

LOCAL INTEREST

- " Contacts with community members - any inquiries from community members, groups, organizations, etc. (include names, phone numbers, and addresses on the key contact list).
- " Community interactions - any current meetings, events, presentations, etc.
- " Media coverage - any newspaper, magazine, television, etc., coverage.
- " Government contacts - city and county staff, state and local elected officials.

KEY CONTACT LIST

- " Names, addresses, and phone numbers of city manager, city/county planning department staff, local elected officials, and other community members with whom previous contact has been made.

PAST PUBLIC INVOLVEMENT ACTIVITIES

- " Any ad hoc committees, community meetings, workshops, letters, newsletters, etc., about the site or similar activity.

KEY ISSUES AND CONCERNS

- " Any specific concerns/issues raised by the community regarding the site/facility or any activities performed on the site/facility.
- " Any anticipated concerns/issues regarding the site/facility.
- " Any general environmental concerns/issues in the community.

PP Review _____ Date_____